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Northeast Magazine story: Why Can't We Pass This Law?



By KIM KAVIN

Try to recall the last time a sweeping majority of Connecticut residents agreed on anything. The war in Iraq? Fat chance. That Connecticut's casinos play an important economic role? Only 65 percent say that's true. How about the New York Yankees being better than the Boston Red Sox? It's a 43-to-33-percent split.

Yet a new poll commissioned by Northeast and conducted by the UConn Center for Survey and Research Analysis says that 83 percent of state residents think adults should be allowed to use marijuana for medical purposes if a doctor prescribes it. Eighty-three percent. That's more than 10 percent higher than the number who thought Gov. John Rowland should have resigned, and a solid 35 percent more than plan to vote for either President George W. Bush or Democrat John F. Kerry in the upcoming election. It's a whopper of a figure, 83 percent, one that would seem to make the legalization of medical marijuana inevitable in Connecticut - through the sheer will of the people.

Now exhale, and think the thing through. Sure, most people say their loved ones with cancer, multiple sclerosis, AIDS and other crippling diseases should be able to light up a joint if it eases their symptoms, but how should they get the drug? Exactly how many ounces of it should they be allowed to have in their home? Should they be able to grow their own plants? If so, how many at once? And what will happen to those plants - and all the buds they produce - after the person's illness subsides?

These are the kinds of questions that derailed "An Act Concerning the Medical Use of Marijuana," put forth in the last General Assembly session by state Rep. James W. Abrams, D-Meriden, and state Rep. Penny Bacchiocchi, R-Somers. The 43-year-old Bacchiocchi has become the human face on the legislation, even admitting during a speech on the House floor that she copped some pot for her terminally ill husband two decades ago after a bone cancer operation left him a paraplegic.

"I remember the fear that I had as a caregiver," her written text states. "I risked so much to obtain the marijuana: arrest, court costs, incarceration, probation, criminal records. ... Thousands of Connecticut residents are undergoing similar treatments and using marijuana, and they are living in fear."

As the new poll says, most residents believe such legal fears should be eliminated. But the same set of residents also said, by a 57-32 percent ratio in the poll, that marijuana should remain illegal in general - and it is that number that is driving opposition to the medical marijuana cause. Simply put, many lawmakers think making medical marijuana legal would open the door to legalizing marijuana in general, which in turn would lead to more use of harder drugs.

"Huge money, millions of dollars are being spent by groups that want to legalize marijuana," says state Rep. Toni Boucher, R-Wilton, who is leading the Connecticut opposition. "And they really feel that this is a sympathetic way to get in the door."

Boucher is a longtime education advocate who sees keeping drugs out of children's hands as the paramount issue. Legalizing the use of marijuana for people who are sick, she says, is merely a step on the slippery slope toward legalizing the drug altogether. She has one constituent whose son died from drug abuse after trying marijuana and then progressing to harder drugs. Some studies show that marijuana does have this "gateway" effect, while other studies argue the opposite, but Boucher is firmly in the camp of her constituent - who begged her to fight the medical marijuana amendment to prevent more children from experimenting with drugs until they die.

Boucher takes the cause seriously, even inviting Dr. Andrea Barthwell to Hartford to speak. Barthwell made the trip between her other duties as the adviser to President Bush on ways to reduce the demand for drugs in America, and she is quite clear on what the administration sees as the connection between the medical marijuana trend and the broader war on drugs.

"Moving in that direction will make the drug problem in this country larger," Barthwell said in an interview last month. Marijuana is not a medicine, she emphasized. "There are some physicians who will gently endorse a patient who is pushing toward this, but they may as well offer the person alcohol or cocaine or heroin."

With those kinds of comments reverberating throughout Hartford's halls, state lawmakers ended their recent session and left the medical marijuana legislation stalled. While a state law passed in 1980 remains on the books - allowing physicians to provide marijuana and patients to possess it - its wording makes it nothing more than symbolic in the face of the federal marijuana prohibition. Connecticut is now like many other states where voters overwhelmingly say they want workable medical marijuana legislation, but where the nuts-and-bolts creation of it pits people like Bacchiochi, who watched a loved one suffer and die, against people like Boucher, who wants to keep kids off drugs. All around them are legislators looking to vote without seeming indifferent to the very real concerns each side raises.

"There are legislators like Toni Boucher who really believe in their heart that they're doing the right thing," Bacchiochi says. "I respect that. But then there are legislators who get into the technical aspects: 'Where do you get the first seed?' 'How do you prosecute that?' And I'm saying that every day, people are suffering and dying because we can't get past the technical hurdles."

Boucher doesn't agree that the question is one of medicine and legal language. "In my heart of hearts, I don't believe that," she says. "I'm doing this for the kids."

And that - no matter what the poll says - is just the beginning of trying to answer the bigger question surrounding Connecticut's medical marijuana standoff: Why is this so hard?

Trying to determine whether marijuana is an effective natural remedy or a dangerous gateway drug is like trying to determine whether abortion laws should protect mothers or babies. Most advocates are entrenched in dogma. They speak unequivocally in favor of their own statistics. They're akin to talking heads on cable television news programs, hurling data like javelins into the arguments of their opposition. For every doctor who calls the current law misguided, heavy-handed and inhumane toward ailing adults, there is a doctor ready to discuss drug addiction as a widespread, pediatrically acquired disease.

"It is sharply divided in the public debate because there is an essential question here," Barthwell says. "Is this really an essential medicine for the treatment of almost a hundred ailments? Is it really the first magic bullet in a smoke form, or is it a cruel hoax?"

The one thing both sides agree upon is that marijuana is a plant - an absurdly basic fact from which the most serious of arguments stem. In the context of modern medicine, a plant is the opposite of a pill. It is grown instead of manufactured. It offers unending supply instead of controllable dosages. It exists in nature and thus cannot be patented by a pharmaceutical company - nor can it ever be as concentrated as what such companies can extract from it and repackage in a bottle of caplets.

Neither side argues that marijuana's active ingredient, THC, can have a beneficial effect for people suffering from pain, nausea, vomiting and other symptoms caused by serious illnesses. Marijuana's medicinal use dates back nearly 5,000 years. It was legal in America until just before World War II. The question today's argument focuses on is not whether THC can be helpful, but whether smoking a joint is the best way to deliver that key ingredient into the body.

"There is tremendous promise with the plant," Barthwell admits. "But the way we bring medications to the marketplace in the 21st century is by taking the crude botanical, isolating [the active ingredient], then manipulating it to see if you can increase the speed of its onset of action, increase its affinity of binding to the receptor." In the case of marijuana, the discussion is about delivering THC while reducing the side effects that some studies say can come from smoking the plant, such as coughs, lung infection and cancer.

The only drug that has achieved this is Marinol, whose active ingredient is a synthetic form of THC. The federal Food and Drug Administration approved Marinol for treatment of nausea and vomiting associated with cancer chemotherapy in 1985, and for the treatment of anorexia in AIDS patients in 1992, according to Georgia-based Unimed Pharmaceuticals, which markets, manufactures and distributes the drug. Unimed is a subsidiary of Belgium-based Solvay S.A., whose 2003 annual report lists sales of Marinol in the United States up 32 percent from 2002 to 70 million euros (over \$84 million at current exchange rates). The drug's launch is currently being prepared in Europe.

Marinol is the escape hatch that legislators like Boucher look to first in the medical marijuana debate. Smoking makes people sick in ways that pills don't, they say. Because Marinol exists, there's no need to discuss legalizing marijuana itself. They insist it's not the THC they're against; it's the act of growing it and smoking it.

"Is it right to say that even though this method is less effective medically, we should allow people to grow plants in their homes without control?" Boucher asked. "We have such potent drugs right now that alleviate people's pain. Who's going to be held liable for cancer if we approve this smoking?"

Bacchiochi looks at Marinol from a more personal perspective, one that many advocates on her side of the debate share. Her husband was in his early 20s when he was diagnosed with bone cancer, and the surgery to remove the tumor did nothing beyond leaving him immobile. She watched him drop 60 pounds before he died. He tried Marinol, but couldn't keep it down. He was simply vomiting too much.

One day at the Veterans Affairs hospital in Boston, Bacchiochi says, she left her husband's room to get a vending machine snack. A doctor approached. He asked her not to tell anyone they had spoken, then suggested that she get her husband some marijuana.

"This is a terminally ill man," Bacchiochi recalls. "You just want some relief. I knew people who smoked pot, and so I got some joints. It was a night and day difference. He could control the intake."

Bacchiochi says the alleviation began almost immediately, a benefit that pills don't offer. They take time to digest and work their way through the bloodstream, whereas taking a few puffs causes a much faster reaction. It's another common argument on the side seeking legalization for medical use, one that was articulated in a recent editorial in the Providence Journal by former U.S. Surgeon General Dr. Joycelyn Elders. She wrote that some patients avoid the hazards of smoking by using simple devices called vaporizers, then added: "For many who only need a small amount - like cancer patients trying to get through a few months of chemotherapy - the risks of smoking are minor."

Barthwell, whose degree is in addiction medicine, counters that such arguments are more about support for smoking pot than they are about alleviating symptoms. "Anyone who's ever treated pain knows that you don't wait for the pain to get out of control, then bring it back under control through medication."

So the debate swirls, with Connecticut's 83 percent public opinion figure trapped in the eye of this tornado that feeds on points and counterpoints. While national polls also consistently show public support for medical marijuana use, only nine other states have actually found a path out of the stormy debate to the passage of effective laws.

And in most of them, it wasn't elected officials who got the job done.

Seven of the nine states that have workable medical marijuana laws achieved them through ballot measures, not through legislation. With the exception of Hawaii and Vermont, where lawmakers passed bills, regular citizens have had to build up grass-roots support for referendums in order to make medical marijuana legal. California was the first state to do this, in 1996, and was pretty much the last state to do it without major influence from national special-interest groups. Ever since advocates for medical marijuana saw the game plan that worked in Sacramento, they have worked to recreate it with referendums in targeted states across the country.

Since referendum is not an option available to Connecticut citizens, what's happening here seems to be most closely in line with what happened in Maryland, where lawmakers enacted the best law they could get enough votes to support. It does not make medical marijuana legal, but limits the penalties that can be imposed on people who are arrested and charged with possession.

"Maryland is a textbook example of why it's so difficult to go through legislatures," says Bruce Mirken, director of communications at the Washington, D.C.-based Marijuana Policy Project, a group that aims to reform marijuana laws and remove criminal penalties for its use. "It was a three- or four-year process after which we got this hideous compromise. It's better than nothing, but it still leaves terribly ill patients having to go through being arrested and spending thousands of dollars in legal fees."

The problem his group has learned to expect with lawmakers is that they see the war on drugs as a sacred cow. "It's one of those things like mom, apple pie and the pledge of allegiance that they are simply scared to touch," Mirken says. In the early 1980s, some lawmakers were voted out of office for being considered too soft on drugs. That message has stuck, Mirken says, even though polls consistently show that the majority of citizens are all right with medical marijuana as an exception to the federal prohibition.

When lawmakers block something that 83 percent of the people say they want, he says, the only course for change is the ballot box.

"Eighty-three percent, that's a number out of Soviet elections," he says. "It's higher than average. With that sort of popularity, it's the sort of thing that in other cases politicians jump on. The only way to shift the legislative landscape is for a few people to get voted out of office who are opposed. The lesson needs to be relearned. I really think that unless they start to understand that there is strong support and that it's an issue that at least some people will vote on, it's going to be a struggle."

Part of that relearning includes looking at what has happened to drug use rates among children in states that have passed medical marijuana laws. California has the longest track record by which to judge, and the state's attorney general publishes a study every two years called the California Student Survey. The most recent data, compiled in 2001-02, regards more than 8,000 students in the seventh, ninth and 11th grades at 113 schools. It found no increase in marijuana use among high-schoolers and a notable decline among seventh-graders. Eleventh-graders said marijuana was almost as readily available as alcohol and about as dangerous, and most students in all age groups said friends were their most likely source of pot.

"If you go back to the early '90s, you see that adolescent marijuana use in California was rising up until 1996, the year they passed Prop 215," Mirken says. "Since then, it has gone down - as much as 40 percent in some age groups. And yet people like [Bush adviser] Barthwell keep making these utterly ridiculous claims."

The only thing consistently rising, it seems, is public opinion in favor of medical marijuana use. In Connecticut, according to the poll, it has risen even higher than elsewhere in the nation.

At the end of June, the U.S. Supreme Court announced it will hear arguments this winter that are likely the most important to reach the bench on this issue. The appeal is from the Bush administration, which lost a case last year involving two California women who smoke pot to alleviate chronic pain and other problems. The court will consider whether federal marijuana prohibition trumps state medical marijuana laws.

If the administration loses, federal officers will no longer be allowed to arrest patients in states where medical marijuana is legal. If the administration wins, the status quo will continue, with residents of states with workable laws being protected at the state level, but not from federal prosecution. (State laws offer decent protection, since the federal Drug Enforcement Agency does not have the staff to scour every state looking for cancer and AIDS patients.)

The debate will thus continue at the state level either way. In Connecticut, assuming their re-election this fall, that means Boucher and Bacchiochi will take up sides again. The two Republican women could not be more different in appearance - Boucher is a short brunette tucked into a navy blue suit with a gold pin on the lapel, while Bacchiochi is a tall blonde who favors a pink sleeveless dress with open sandals that reveal a toe ring - but both are on the same page in stating their commitment to move the issue forward.

Boucher said in an interview in June that she thought she could summon enough bipartisan support for a Connecticut law that would allow terminally ill people to use medical marijuana under a doctor's orders provided the drug was distributed to patients instead of grown by them. Her thinking is that such a law would eliminate concerns about cancer and other negative smoking consequences (eligible patients would already be on their deathbeds) and would eliminate the problem of plants being grown without supervision across the state. "I want them to show me that there's not another way to skin this," she said, emphasizing that in no case should patients be allowed to grow their own plants. "Why can't we in Connecticut test something where it is distributed over a counter, when they're terminally ill, and then you don't worry about the caregivers and what's going to happen to the plants?"

Bacchiochi doesn't favor that compromise; she says lawmakers are not doctors and should not be in the business of deciding who qualifies as needing certain types of drugs. "As far as the distribution of marijuana, if we could find a way to distribute it without it being grown that would be great, but because of its [federal] classification, that's not possible," she said. "I'm all for compromise, but the more educated you become, you realize that many of the compromises will not work."

When told of the recent poll that showed 83 percent of state voters want a medical marijuana law, Boucher said her position had not changed. "The way that the question was stated, it was very easy to agree with it," she said. "The legislation being proposed in Hartford on this is dramatically different. That is a very simplistic question not at all reflecting the legislation that has been proposed."

One might expect Bacchiochi to celebrate the poll's results, but she did not do so immediately. "My initial reaction is that it's just so sad," she said. "Because I had such a personal experience with this, it's not political for me. I get choked up when I hear those numbers. It's a painful reminder that people are suffering and that we have to do something to help them."

At the end of the day, Bacchiochi said, whatever the lawmakers do won't make much difference. Marijuana - despite the federal prohibition - is easy to acquire in virtually every town and city. Nobody wants kids getting hooked on it, but desperate adults will buy it whether it's legal or not. She just wishes it didn't have to be that way for those watching a loved one suffer.

"My suspicion is that people aren't even going to grow marijuana," she said. "The people who are smoking pot are going to continue smoking pot. The ones who aren't, who want to be law-abiding, are the ones this is meant for."

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